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T.R.A. DOCKET ROOM  
July 2, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with  
BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996  
Docket No. 03-00119

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's Motion to Remove  
Issues from DeltaCom's Petition for Arbitration. Copies of the enclosed are being  
provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Petition for Arbitration of ITC^DeltaCom Communications, Inc.  
with BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996*

Docket No. 03-00119

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
MOTION TO REMOVE ISSUES FROM ITC^DELTACOM  
COMMUNICATIONS, INC.'S PETITION FOR ARBITRATION**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully moves the Tennessee Regulatory Authority ("Authority") to remove certain issues raised by ITC^DeltaCom Communications, Inc. ("DeltaCom") in its Petition for Arbitration ("Petition").

On February 7, 2003, DeltaCom filed its Petition raising 71 issues, many of which had multiple subparts. A number of the Issues presented by DeltaCom have previously been addressed by the FCC and the Authority on a generic basis (Issue 9), or are more appropriately addressed in other dockets or forums, such as the Change Control Process ("CCP") previously endorsed by the FCC and the Authority, or are simply not appropriate for an arbitration under Section 252 of the Telecommunications Act of 1996 (Issues 6, 66, and 67). For the reasons set forth below, the Authority should remove Issues 9, 6, 66 and 67 from this arbitration proceeding.

## **DISCUSSION**

### **ISSUE 9 - OSS Interfaces:**

In this issue, DeltaCom appears to challenge the nondiscriminatory access standard applicable to BellSouth's provision of Operational Support Systems ("OSS"). This standard, and BellSouth's compliance with that standard, were the subject of extensive litigation in connection with FCC Docket No. 02-307<sup>1</sup> wherein the Authority provided its Advisory Opinion addressing BellSouth's application to provide long distance services in Tennessee. Based on the evidence presented by the parties in the state and federal 271 proceedings and the Authority's Advisory Opinion, the FCC concluded:

We find, as did the state commissions (FN omitted), that BellSouth provides nondiscriminatory access to its OSS and, thus, satisfies the requirements of checklist item 2. We find that the evidence presented in this record shows that BellSouth provides nondiscriminatory access to its OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. We base this determination on BellSouth's actual performance in Florida and Tennessee.<sup>2</sup>

Apparently unhappy with the Authority's decision in the 271 Docket, DeltaCom now seeks to have the Authority, in the context of a two-party Section 252 Arbitration, impose a new set of standards and requirements on BellSouth's OSS, notwithstanding the fact that said OSS have already been

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<sup>1</sup> FCC Docket No. 02-307; *Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Authorization to Provide In-Region, InterLATA Services in Florida and Tennessee.*

<sup>2</sup> FCC Memorandum and Order in Docket No. 02-307, Released December 19, 2002, at ¶ 67.

found by the Authority and FCC to be nondiscriminatory. The Authority should reject DeltaCom's attempt to rewrite the law and, instead, strike Issue 9 from this proceeding.

**ISSUE 6 - Facility Check Information<sup>3</sup>:**

**ISSUE 66 - Testing of End-User Data:**

**ISSUE 67 - Availability of OSS Systems:**

These issues all revolve around DeltaCom's attempt to circumvent BellSouth's Change Control Process ("CCP"), which is the process by which BellSouth communicates with Competitive Local Exchange Carriers ("CLECs") regarding, among other things, changes to the OSS. The CCP allows all CLECs to have a voice in upgrades to the OSS and in the priority in which OSS changes will be made. The CCP has an appeal procedure that allows CLECs to petition the Authority if they are aggrieved by an action taken (or not taken) by the CCP. The CCP was reviewed extensively by the Authority and the FCC during the 271 Docket. Based on the evidence presented by the parties in the state and federal 271 proceedings, and the Authority's Advisory Opinion, the FCC concluded:

We conclude, as did the state commissions, that BellSouth meets the requirements of checklist item 2 with regard to change management in Florida and Tennessee. (FN omitted.)

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<sup>3</sup> This issue initially impacts performance measurements, such as firm order confirmation ("FOC") timeliness. Therefore, the Authority would need to address any performance measurements impacts prior to this issue being submitted to the CCP. The Authority has an existing performance measurements docket (Docket No. 01-00193) to address this type of issue. Moreover, DeltaCom was a signatory to the Settlement Agreement in the 271 proceeding in Tennessee, wherein the parties agreed to adopt, until at least December 1, 2003, the SQM and SEEMs plans adopted by the Florida Public Service Commission in its February 14, 2002 Order. (See Order Approving Settlement Agreement, *BST Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket 97-00309, August 29, 2002.)

The record in this proceeding shows that Bellsouth's change control process, and its performance under this process, is comparable to, if not better than, BellSouth's performance in the *BellSouth Georgia/Louisiana Order* and the *BellSouth Multistate Order*. We have carefully scrutinized this process, heedful of the Department of Justice's attention to this issue.<sup>4</sup>

Clearly, the FCC and the Authority have endorsed the CCP as the vehicle for addressing modifications to BellSouth's OSS, including an appeal procedure for aggrieved CLECs. The CCP allows the CLEC community, as a whole, to determine (*i.e.*, rank) which OSS modifications are the most critical. Once all CCP participants agree to the ranking of modifications, BellSouth begins implementing the OSS modifications based on that ranking. DeltaCom seeks to avoid the FCC- and Authority-approved process by circumventing the rankings of the CLEC community.

In essence, if DeltaCom is allowed to bring any of these issues in this Section 252 Arbitration (and the Authority were to order BellSouth to implement any of the requested changes), then these issues will go to the top of the CCP modification list as a regulatory mandate and supplant the CLEC community's ranking. The Authority should not allow DeltaCom, or any single CLEC, to substitute its opinion for the will of the CLEC community. If DeltaCom is aggrieved by the ultimate decision of the CCP, DeltaCom can challenge that decision via the CCP established appeal procedure. These issues should be addressed in the CCP (or, as noted

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<sup>4</sup> FCC Memorandum and Order in Docket No. 02-307, Released December 19, 2002, at ¶ 110.

above, in the performance measurements docket) and stricken from this  
Section 252 Arbitration.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

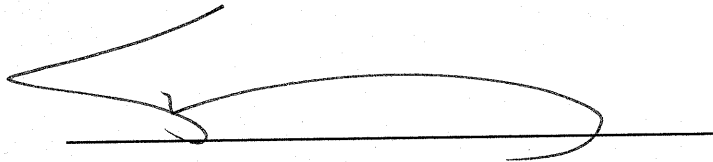
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A handwritten signature in black ink, appearing to be "David Adelman", written over a horizontal line.